



June 15, 2001

Ms. Victoria J. L. Hsu, P.E.  
Executive Director  
Texas Board of Professional Engineers  
1917 IH 35 South  
Austin, Texas 78741

OR2001-2556

Dear Ms. Hsu:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148456.

The Texas Board of Professional Engineers (the "board") received a request for "[a]ny documents pertaining to any petition for disciplinary action against any professional engineer in relation to the 1999 Aggie Bonfire collapse." You state that the board has no documents that are responsive to this particular request. Because you are uncertain as to the actual scope of the request, you sought clarification from the requestor. *See* Gov't Code § 552.222(b) (permitting governmental body to ask requestor to clarify request). The requestor, however, did not respond to your request for clarification. Based on a good-faith attempt to relate the documents in the board's possession to the request for information, you assume that the request extends to all complaints filed against professional engineers in connection with the 1999 Bonfire collapse. Assuming that the request does extend to such complaints, you claim that they are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 22A, article 3271a, V.T.C.S. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 22A of article 3271a, V.T.C.S., the Texas Engineering Practice Act, provides as follows:

- (a) The Board shall keep an information file about each complaint filed with the Board relating to a license holder.
- (b) If a written complaint is filed with the Board relating to a license holder, the Board, at least as frequently as quarterly, shall notify the parties to the complaint of the status of the complaint until final disposition unless the notification would jeopardize an undercover investigation.
- (c) The Board shall adopt rules that permit the Board to receive and investigate confidential *complaints against license holders or any other person who may have violated this Act*. The Board shall maintain the confidentiality of the complaint during the investigation of the complaint. (Emphasis added.)

Thus, any complaint filed with the board that relates to a particular license holder or “any other person who may have violated [the] Act” is confidential during the investigation of the complaint and must be withheld under section 22A of article 3271a, V.T.C.S.

Here, you have submitted as responsive to the request a complaint filed with the board that alleges that certain individuals associated with the 1999 Bonfire collapse may have violated the Texas Engineering Practice Act. Therefore, since the board’s investigation into the 1999 Bonfire collapse is still ongoing, we conclude that all of the submitted information is confidential under section 22A, article 3271a, V.T.C.S., and must be withheld under section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Stephen P. Agan  
Assistant Attorney General  
Open Records Division

SPA/seg

Ref: ID# 148456

Enc. Submitted documents

c: The Battalion  
1111 TAMU  
College Station, Texas 77843  
(w/o enclosures)